RECORD OF ORAL HEARING

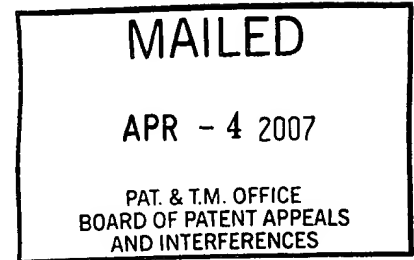UNITED STATES PATENT AND TRADEMARK OFFICE

4   _____

5

6   BEFORE THE BOARD OF PATENT APPEALS
7   AND INTERFERENCES

8   _____

9

10   Ex parte MIKE KINSELLA | **MAILED** |

11 | |

12 | APR - 4 2007 |

13   Appeal 2007-0150 | PAT. & T.M. OFFICE |

14   Application 09/592,563 | BOARD OF PATENT APPEALS |

15   Technology Center 2600 | AND INTERFERENCES |

16

17   _____

18   Oral Hearing Held: February 13, 2007

19   _____

20

21

22   Before KENNETH W. HAIRSTON, JOSEPH L. DIXON, and

23   HOWARD B. BLANKENSHIP, Administrative Patent Judges.

24

25   ON BEHALF OF THE APPELLANTS:

26

27   JOANNE MASON

28   Ked & Associates, LLP

29   P.O. Box 221200

30   Chantilly, VA 20153-1200

31

32

33   The above-entitled matter came on for hearing on Thursday, March 8,

34   2007, commencing at 1:00 p.m., at The U.S. Patent and Trademark Office,

35   600 Dulany Street, Alexandria, Virginia, before Timothy Atkinson, Notary

36   Public.

1   JUDGE HAIRSTON: You may argue from the podium if you'd like.

2   MS. MASON: Okay. I can start whenever you're ready.

3   JUDGE HAIRSTON: Yes, you can start when you're ready.

4   MS. MASON: Okay. Thank you for making the time to see us this

5   afternoon, especially in the bad weather.

6   I'm here to talk today about our client's invention, which is a

7   messaging system. The messaging system can be used to send a message

8   from a sender to a receiver without the sender actually having the benefit of

9   the identity or the contact information of the particular recipient that he has

10   selected. In this system, central messaging system directs a message to an

11   intended recipient of that message based on some number of personal

12   characteristics that the sender has observed in a particular venue of this -- of

13   the recipient. The sender's messages sent to the recipient based on a match

14   of those observed characteristics, and those characteristics can be any

15   number of different things. It can be physical characteristics, it can be

16   location, time, things like that.

17   Some practical application, you have some number of -- some large

18   number of subscribers that subscribe to a particular service. They enter their

19   personal details into a database, and those details may be, again, physical

20   characteristics, height, weight, hair color, eye color. It may include a listing

21   of frequently visited locations. It may include -- it can be, it can be updated

22   regularly so that you can update it to say, yesterday I was at location A.

23   Tonight I will be at location B. Tomorrow I will be at location C. I am at

24   location D every Wednesday night. Something like that. It can be updated

25   to reflect the clothing that someone is wearing in a particular venue. So in

26   some venue, a first, a first member or, say a sender observes a second

2

1   member, say the recipient, and would like to send this -- would like to

2   somehow make contact with this recipient that he has identified. He

3   observes the physical characteristics and the location and enters those things

4   into a query along with the message that's sent to the central database. The

5   database conducts a query for a match based on these observed

6   characteristics, and tries to attach an identity to this intended recipient of the

7   message. The message is then transmitted to this intended recipient based

8   on what the database finds based on the location, the physical characteristics

9   and whatnot.

10   JUDGE HAIRSTON: So you have a message in Claim 1, but that

11 message is never sent, right? It's just adapted -- right?

12   MS. MASON: Correct. Because in some situations, prior to the

13 message being sent, the sender can get the results of the matching that the

14 database has done to attach an identity to the recipient, and then the sender

15 can choose to send it or not send it.

16   JUDGE HAIRSTON: Is there a message in the reference? Is there a

17 message created in the reference to Fraccaroli --

18   MS. MASON: Fraccaroli.

19   JUDGE HAIRSTON: Fraccaroli?

20   MS. MASON: Fraccaroli has three different -- discloses three

21 different systems, two of them prior systems, and the third his own

22 invention. In one of those three a message can be sent. In the other two, it's

23 just an indication that a match has been made. Okay?

24   So, as I said, the system can be continuously updated, so as you

25 change locations, you can update your location, you can update what you're

26 wearing, you can update anything that might allow a potential sender to

3

1   more easily identify you, or more accurately. Allow the system to identify

2   you, I should say. The closeness of the match may also be -- may be

3   adjusted so that, let's say if you only want exact matches to come back, it

4   will be -- it will discriminate more tightly.

5   In the Fraccaroli System, Fraccaroli discloses three different systems,

6   two of those, as I said, Prior Art (Phonetic Sp.), and the third, his invention.

7   In the Prior Art system, the first is a traditional dating service in which -- the

8   first is a traditional dating service in which members subscribe to a service,

9   they input their different physical characteristics, their preferences for a

10   match. One of those may be where they live. And then a computer database

11   generates potential matches for them, and then they can choose to send one

12   of those potential matches some sort of message, either by phone or by e-

13   mail or whatever. But in that situation, the computer is selecting recipients

14   for you. The sender, or the requester, is not identifying a recipient based on

15   observed physical characteristics or location.

16   The second system that Fraccaroli discusses are these wearable

17   devices called Hot Badges, and these Hot Badges can be preloaded with

18   some amount of personal information and preferences for matching, and as

19   these devices come into close proximity to each other, they detect each

20   other's presence, signal each other, and when there is some predetermined

21   amount of matching between the information stored on the devices and

22   they're within range, they will signal each other and let you know that there

23   is someone nearby that meets your criteria. But again, this only works -- the

24   first, the match is made, again, by these devices, by these little computerized

25   devices, and they only work within a very small limited range. So the

26   location is limited to the small range of the devices themselves.

1   The recipient -- the sender -- there is no sender and receiver really, it's

2   -- the devices are just talking to each other and signaling both parties that

3   there might be someone in range.

4   Now, in Fraccaroli's system, Fraccaroli, as his invention discloses, a

5   system which is incorporated -- an introducting (Phonetic Sp.) system,

6   which is incorporated into a mobile telecommunication system. In this

7   situation, users fill out a profile, again with their own physical characteristics

8   and then preferences for matches. This information is stored in a database,

9   and that database is associated with the home location register to which the

10   users handset, mobile handset, is associated with. As a user and his handset

11   move from one location to another, or one cell to another, the handset has to

12   register with the new base station as it enters the new cell to enable

13   appropriate call routing and the like.

14   Anyway, as the handset moves into a new cell, it registers its location

15   with the visiting location register of that cell, and that communicates back to

16   the home location register.

17   The home location register creates a grouping of mobile devices

18   within a given cell or a different location, geographic location, and then

19   requests that matches be made based on people grouped within that

20   particular cell. So it goes to a matching engine and a server that are

21   collocated with the home location register.

22   The system then sends back to the user a listing of potential matches

23   within the geographic area that the user and the handset are located at that

24   time, and allows the user, if he chooses, to send a message to any one of

25   those users that are identified within the group at that time. It can also alert

26   a user when a particular user ID has entered his area that he's in. But in that

1   instance, you have to know the identification of the person you're looking

2   for. Okay?

3   So, none of these systems that Fraccaroli discloses have an intended

4   recipient. In each of these situations, the recipient is selected for the sender

5   by a computer database. In none of these instances does the sender have an

6   opportunity to list the physical characteristics that he has observed of

7   someone in a particular venue and say, this is the person I want to meet, this

8   is the person I want to make contact with. All of the action is initiated by

9   the computer, selected by the computer, and not by the member. The

10   Fraccaroli systems are -- at least two of the three are very dependent on

11   location as the first discriminator and only the current location. So that

12   location is defined by the system, not by the user. So, if on Sunday you

13   want to find out how to make contact with someone that you saw on

14   Saturday in a different location, Fraccaroli's system can't be adapted to do

15   that.

16   So our system allows a sender to observe a potential recipient and say,

17   this is the person I would like to send this message to. That becomes their

18   intended recipient. To deliver it choice of a recipient rather than the system

19   selecting a recipient or a potential match for them, and allows the user to

20   initiate any action rather than relying on a database to dictate that action to

21   them.

22   I can stop here if you have any questions.

23   JUDGE HAIRSTON: I don't have anything further. Do you have any

24   questions? No questions.

25   MS. MASON: Okay. Would you like me to discuss the claims, the

26   specific claims, or --

1   JUDGE HAIRSTON: That's strictly up to you.

2   MS. MASON: Okay.

3   JUDGE HAIRSTON: If you feel you need to, go ahead.

4   MS. MASON: I would just like to talk about the three independent

5 claims if that's okay.

6   JUDGE HAIRSTON: Sure, go ahead.

7   MS. MASON: Okay. We have three independent claims,

8 Independent Claims 1, 23 and 46. Independent Claims 1 and 46 are

9 apparatus claims, and Independent Claim 23 is a related method claim.

10   In Independent Claim 1, we have -- we recite in the center portion of

11 Independent Claim 1, the message which the -- I'm sorry, the sender -- the

12 message which the sender composes, along with the physical characteristics,

13 the observed characteristics. It includes details of the intended recipient of

14 the message. Those details, again, are what I discussed, the physical

15 characteristics, the location. So you see, throughout Independent Claim 1,

16 we recite, intended recipient. The message comprising details of the

17 intended recipient of the message. So we feel this defines over the

18 Fraccaroli reference because in none of those three systems discussed by

19 Fraccaroli is there an intended recipient.

20   In Claim 46, we go on to recite that the message comprises personal

21 characteristics of an intended recipient of the message based on personal

22 characteristics observed by a user. So, even a little more specific.

23   And then Independent Claim 23, which is an associated method claim.

24 In the Step B, we recite: receiving messages that a central message pushing

25 system, the messages, including details of the appearance and location of the

26 intended recipient. We don't believe that any of the systems disclosed by

1   Fraccaroli at any point in time allow the sender to input details of an

2   appearance of an intended recipient or a location of an intended recipient.

3   We do have some dependent claims also, Claims 8, 30 and 31, that

4   discuss input of previous locations and frequently visited locations. As I

5   said, the two systems that Fraccaroli discusses that have anything to do with

6   location, the Hot Badges are limited to the very short range of the devices,

7   and the -- Fraccaroli's invention is dictated by the definition, the system's

8   definition of a cell or service area for the particular set of handsets, grouping

9   of handsets.

10   JUDGE HAIRSTON: Can I ask you a quick question?

11   MS. MASON: Sure.

12   JUDGE HAIRSTON: In Claim 1, you have the message sending and

13 receiving devices in the second paragraph, "telecommunication links for

14 communicating with message sending and message receiving devices."

15 Then in the second to last line you say, "adapted to transmit the message to

16 the message receiving means."

17   MS. MASON: Yes, we're aware of that, that should be device. I'm

18 sorry.

19   JUDGE HAIRSTON: Thank you.

20   MS. MASON: Thank you.

21   (Whereupon, the proceedings concluded.)